

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 93

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLE LEASE AND RENTAL TAX; AMENDING SECTION 63-3613, IDAHO CODE, TO REVISE THE DEFINITION OF "SALES PRICE"; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 46, TITLE 63, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR A MOTOR VEHICLE LEASE AND RENTAL TAX, TO PROVIDE FOR CERTAIN EXEMPTIONS, TO PROVIDE FOR DEPOSIT OF MONEYS, TO PROVIDE FOR REGISTRATION, RETURNS AND PAYMENTS, TO PROVIDE FOR CERTAIN TAXES AS STATE MONEYS, TO PROVIDE THAT THE TAX COMMISSION SHALL ENFORCE PROVISIONS OF THE MOTOR VEHICLE LEASE AND RENTAL TAX AND TO PROVIDE FOR RULES, TO PROVIDE FOR REFUNDS, LIMITATIONS AND INTEREST, TO PROVIDE FOR DEFICIENCY DETERMINATIONS, TO PROVIDE FOR CERTAIN INTEREST, TO PROVIDE FOR A PERIOD OF LIMITATION, TO PROVIDE FOR ADDITIONS AND PENALTIES, TO PROVIDE FOR AUTHORITY OF THE TAX COMMISSION TO ENTER INTO CERTAIN AGREEMENTS AND TO PROVIDE FOR COLLECTION AND ENFORCEMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3613, Idaho Code, be, and the same is hereby amended to read as follows:

63-3613. SALES PRICE. (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.

3. The cost of transportation of the property prior to its sale.

4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

(b) The term "sales price" does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.

2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.

3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.

5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

6. The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.

8. Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.

9. The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code, by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.

10. The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.

11. The amount of any motor vehicle lease and rental tax imposed under chapter 46, title 63, Idaho Code.

(c) The sales price of a "new manufactured home" or a "modular building" as defined in this act shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.

(d) Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

(e) Tangible personal property when sold at retail for more than eleven cents (\$.11) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.

SECTION 2. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 46, Title 63, Idaho Code, and to read as follows:

## CHAPTER 46 MOTOR VEHICLE LEASE AND RENTAL TAX

### 63-4601. DEFINITIONS.

(1) (a) "Daily lease or rental rate" means the following:

- (i) Charges for time of use of the rental vehicle and mileage if applicable;
- (ii) Charges accepted by the renter for personal accident insurance;
- (iii) Charges for additional drivers or underage drivers;
- (iv) Charges for child safety restraints, luggage racks, ski racks or other accessory equipment for the rental vehicle;

(b) The term does not include:

- (i) Rental vehicle price discounts allowed and taken;
- (ii) Rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;
- (iii) Motor fuel;
- (iv) Intercity rental vehicle drop charges;
- (v) Taxes imposed by federal, state or local governments.

(2) "Lease," "leasing" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration, including future options to extend the lease or rental.

(3) "Lessee" means any person who leases or rents a motor vehicle from a motor vehicle rental business for the person's own use and not for rental to others.

(4) "Motor vehicle rental business" means any business entity that is engaged in the business of leasing or renting motor vehicles within the state of Idaho without a driver to lessees.

(5) "Rental vehicle" means a motor vehicle that is used by a motor vehicle rental business for rental through an arrangement and for consideration for rental to others, without a driver provided by the motor vehicle rental business, for periods of not more than thirty (30) consecutive days.

63-4602. MOTOR VEHICLE LEASE AND RENTAL TAX. (1) There is hereby imposed a tax of six percent (6%) of the daily lease or rental rate on all short-term leases and rentals of motor vehicles not exceeding thirty (30) days. The rental tax shall be charged on the total amount the motor vehicle rental business charges the lessee for the rental of a motor vehicle. This tax shall be collected on each motor vehicle rental regardless of whether the vehicle is licensed or registered in this state. Incidence of the tax shall occur upon taking delivery of the rented motor vehicle in the state of Idaho.

(2) The rental of a motor vehicle is exempt from the tax imposed in subsection (1) of this section if:

(a) The motor vehicle is registered for a gross weight of eight thousand one (8,001) pounds or more;

(b) The motor vehicle is rented as a personal household goods moving van;

(c) The lease or rental of the motor vehicle is made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair agreement or an insurance agreement; or

(d) The motor vehicle is licensed and operated as a taxicab.

(3) The agencies and organizations that are exempted from paying sales and use tax under section 63-3622, Idaho Code, are exempt from the motor vehicle rental tax imposed under this chapter.

(4) The tax imposed by this section shall be collected by the motor vehicle rental business from the lessee as a part of the vehicle rental agreement. The motor vehicle rental agreement shall separately indicate the amount of the motor vehicle rental tax imposed on each motor vehicle rental.

63-4603. REGISTRATION – RETURNS – PAYMENTS. (1) Any business entity engaged in business as a motor vehicle rental business within the state of Idaho shall register with the state tax commission, in such manner as the state tax commission may prescribe, as a business required to collect the motor vehicle rental tax. Registration will be in the same manner and form as is required for obtaining a seller's permit for state sales tax.

(2) The motor vehicle rental taxes imposed under section 63-4602, Idaho Code, are due and payable by the motor vehicle rental business to the state tax commission monthly on or before the twentieth day of the succeeding month.

(3) All moneys collected or received by the state tax commission from the taxes, penalties, interest and fees imposed by this chapter shall be deposited with the state treasurer to be credited by him to the highway, bridge and railroad crossing fund under section 40-701A, Idaho Code, after making deductions for:

(a) An amount of money equal to the actual cost of collecting, administering and enforcing the motor vehicle rental tax requirements by the state tax commission, as determined by it shall be retained by the state tax commission. The amount retained by the state tax commission shall not exceed the amount authorized to be expended by appropriation by the legislature; and

(b) An amount of money to be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the state tax commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(4) On or before the twentieth of each month, the motor vehicle rental business shall file a return with the state tax commission in such form as the state tax commission may prescribe.

(5) For the purposes of the motor vehicle rental tax, a return shall be filed by every motor vehicle rental business. Returns shall be signed by the person required to file the return or by his duly authorized agent.

(6) For the purposes of the motor vehicle rental tax, the return shall show the total daily lease or rental fees charged for motor vehicle rentals subject to tax under this chapter during the reporting period.

(7) For the purposes of the motor vehicle rental tax, the return shall show the total amount of the taxes for the period covered by the return and such other information as the state tax commission deems necessary for the proper administration of this chapter.

(8) The person required to file the return shall mail or deliver the return together with a remittance of any tax due to the state tax commission for the reporting period.

(9) The state tax commission, if it deems it necessary in order to ensure payment to or facilitate the collection by the state of taxes, may require returns for periods other than monthly periods.

(10) For the purposes of the motor vehicle rental tax, gross amounts from motor vehicle rentals that may be subject to tax under this chapter shall be reported and the tax paid in accordance with such rules as the state tax commission may prescribe.

(11) The state tax commission, for good cause may extend, for not to exceed one (1) month, the time for making any return or paying any amount required to be paid under this chapter.

(12) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate provided in section 63-3045, Idaho Code, from the date on which the tax would have been due without the extension until the day of payment.

63-4604. TAXES AS STATE MONEY. All moneys collected by motor vehicle rental businesses in compliance with this chapter shall, immediately upon collection, be state money and every such business shall hold such money for the state of Idaho and for payment to the state tax commission in the manner and at the times required in this chapter. Such money shall not, for any purpose, be considered to be a part of the proceeds of the lease or rental to which the tax relates and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the retailer to any creditor other than the state tax commission.

63-4605. ADMINISTRATION. (1) The state tax commission shall enforce the provisions of this chapter and may prescribe, adopt and enforce rules relating to the administration and enforcement of this chapter. The state tax commission may prescribe the extent to which any rule shall be applied without retroactive effect.

(2) The state tax commission shall employ qualified auditors for examination of taxpayers' records and books. The state tax commission shall also employ such accountants, investigators, regional supervisors, assistants clerks and other personnel as are necessary for the efficient administration of this chapter, and may delegate authority to its representatives to conduct hearings or perform any other duties imposed by this chapter.

(3) Every motor vehicle rental business shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such motor vehicle rental business or person who files the returns required under this chapter shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.

(4) The state tax commission, or any person authorized in writing by it, may examine the books, papers, records and equipment of any motor vehicle rental business and any person liable for the motor vehicle rental tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) Motor vehicle rental businesses whose pertinent records are kept outside of the state must bring the records to Idaho for examination by the state tax commission upon request of the latter, or, by agreement with the state tax commission, permit an auditor designated by the state tax commission to visit the place where the records are kept, and there audit such records.

63-4606. REFUNDS – LIMITATIONS – INTEREST. (1) Subject to the provisions of subsection (2) of this section, if any amount due under this chapter has been overpaid, the excess amount may be credited on any amount then due to the state tax commission from the person by whom the excess was paid and any balance refunded to that person.

(2) (a) No such credit or refund shall be allowed after three (3) years from the time the payment was made to the state tax commission, unless, before the expiration of such period, a written claim therefor is filed with the state tax commission by the claimant or the claimant's representative, but only if the claimant has authorized in writing the representative to file a claim.

(b) For periods in regard to which the state tax commission asserts a deficiency under section 63-4607, Idaho Code, a claim for any refund, relating to the period to which the deficiency relates, must be made on or before the later of:

(i) The date provided in subsection (2)(a) of this section; or

(ii) The date upon which any administrative or judicial proceeding relating to such deficiency is finally resolved; or

(iii) The date specified in any agreement under section 63-4609(7), Idaho Code.

(c) A taxpayer claiming a refund of amounts paid in obedience to such deficiencies must do so by appealing within the time limits prescribed in section 63-3049, Idaho Code.

(3) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid to the state tax commission.

(4) If the state tax commission denies a claim for refund in whole or in part, it shall provide notice of the denial in the manner provided in section 63-4607(3), Idaho Code. The state tax commission shall issue a final decision pursuant to the requirements of section 63-3045B, Idaho Code. Appeal of a state tax commission decision denying in whole or in part a claim for refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

63-4607. DEFICIENCY DETERMINATIONS. (1) If the state tax commission is not satisfied with the return or returns of the tax, because of errors or omissions discovered in audits or in any other way, it may compute and determine the amount which is due upon the basis of facts contained in the return or returns or upon the basis of any information within

its possession or that may come into its possession and assert a deficiency. One (1) or more deficiency determinations may be made of the amount due for one (1) or for more than one (1) period. In making such determination, the state tax commission may offset overpayments against amounts due.

(2) If any person fails to make a return, the state tax commission shall make an estimate of the amount of sales or use subject to tax by this chapter, and shall in this manner determine the amount of tax due from such person. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information that is in the state tax commission's possession or that may come into its possession.

(3) The state tax commission shall give written notice of its determination and the amount of the deficiency, including any interest and penalties, to the person from whom such deficiency amount is due, in the manner prescribed by section 63-3045, Idaho Code.

63-4608. INTEREST ON DEFICIENCIES. Interest upon any deficiency shall be assessed at the same time as the deficiency and shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate provided in section 63-3045, Idaho Code, from the date prescribed for the payment of the tax.

63-4609. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION. Except as otherwise provided in this section:

(1) The amount of taxes imposed by this chapter shall be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is later, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; provided however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of six (6) years after assessment of the tax and, provided further, that this shall not be in derogation of any of the remedies elsewhere herein provided. The running of the period of limitations provided by this section shall be suspended for the period during which the state tax commission is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(2) In the case of a false or fraudulent return with the intent to evade tax, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun, without assessment, at any time.

(3) In the case of taxes owed by a person who has failed to file a return as provided in section 63-4603, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

(4) The periods of limitation upon assessment and collection provided in this section shall not apply:

(a) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or

(b) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission.

(5) In the case of taxes due during the lifetime of a decedent, or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed, or any proceeding in court without assessment for the collection of such tax

1 shall be begun, within twelve (12) months after written request for prompt action is filed with  
 2 the state tax commission by the executor, administrator or other fiduciary representing the estate  
 3 of such decedent. This subsection (5) shall not apply if the return for which the request for  
 4 prompt action relates has not been filed with the state tax commission.

5 (6) No assessment of a deficiency with respect to the tax imposed by this chapter, and  
 6 no distraint or proceedings in court for its collection shall be made, begun or prosecuted until a  
 7 notice under section 63-3629, Idaho Code, has been mailed to the taxpayer, nor until all appeal  
 8 rights relating to the deficiency have become final.

9 (7) Where, before the expiration of the time prescribed in this section for the assessment  
 10 of any tax imposed by this chapter, both the state tax commission or its delegate or deputy  
 11 and the taxpayer have consented in writing to its assessment after such time, the tax may be  
 12 assessed at any time prior to the expiration of the period agreed upon. The period so agreed  
 13 upon may be extended by subsequent agreements in writing made before the expiration of the  
 14 period previously agreed upon.

15 63-4610. ADDITIONS AND PENALTIES. The additions, penalties and requirements  
 16 provided by the Idaho income tax act, sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho  
 17 Code, shall apply in the same manner and to the same extent to this chapter as to the Idaho  
 18 income tax act and shall cover acts, omissions and delinquencies under this chapter similar to  
 19 acts, omissions and delinquencies under the Idaho income tax act and such additions, penalties  
 20 and requirements shall, for this purpose, be described as and be for such acts, omissions,  
 21 delinquencies and requirements under the Idaho sales tax act; provided however, that the  
 22 provisions of section 63-3076, Idaho Code, shall not prevent the release of information about a  
 23 specific transaction to any party to such transaction and any individual signing an exemption  
 24 claim relating to the transaction. The state tax commission may release such information  
 25 only when it determines that the release will benefit the enforcement of this chapter, and not  
 26 otherwise.

27 63-4610A. AUTHORITY TO ENTER AGREEMENTS. Notwithstanding the provisions  
 28 of section 63-4610 or 63-3076, Idaho Code, relating to confidentiality, the state tax commission  
 29 may enter into a written agreement with the Idaho transportation department providing for  
 30 exchange of information as both the state tax commission and the department may find  
 31 necessary to implement the letter and intent of this chapter or the laws relating to the  
 32 registration of motor vehicles in this state. The state tax commission is not authorized by  
 33 this section to disclose any financial information from any tax return filed with the state tax  
 34 commission other than whether or not an individual filed a resident or nonresident return.

35 63-4611. COLLECTION AND ENFORCEMENT. The collection and enforcement  
 36 procedures provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039,  
 37 63-3040, 63-3042, 63-3043, 63-3044, 63-3045B, 63-3047, 63-3048, 63-3049, 63-3050 through  
 38 63-3064, 63-3065A, 63-3071 and 63-3074, Idaho Code, shall apply and be available to the  
 39 state tax commission for enforcement of the provisions of this chapter and collection of any  
 40 amounts due under this chapter, and said sections shall, for this purpose, be considered part  
 41 of this chapter and wherever liens or any other proceedings are defined as income tax liens  
 42 or proceedings, they shall, when applied in enforcement or collection under this chapter, be  
 43 described as motor vehicle rental liens and proceedings.